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Supreme Court, U.S.
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No. 94-119

In the
Supreme Court of the United States

OCTOBER TERM, 1994

TARCHIA RANKINS, ET AL.,
Petitioners,

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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CITATIONS OF OPINIONS AND JUDGMENTS BELOW

The opinions and judgments of the Supreme Court of the State of Louisiana, the Louisiana Court of Appeal for the First Circuit and the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, are contained in petitioners' Appendix to their Petition for Writ of Certiorari. All references by respondents in this opposition brief will be to those decisions contained in petitioners' Appendix.

INTRODUCTION

This case does not present a substantial federal question. The issue of the validity of Louisiana's graduation exit examination was properly answered by the Louisiana Court of Appeal and Louisiana Supreme Court. The decision of the Louisiana Supreme Court does not conflict with any decision of any other state court of last resort or of any decision of a United States court of appeals. Further, the Louisiana Supreme Court's decision does not concern an important question of federal law which must be decided nor does it conflict with any applicable decision of this Court. Respondents therefore assert that there is no reason for this Court to exercise its discretion in granting the petition for writ of certiorari in this matter.

STATEMENT OF THE CASE

This case concerns the State of Louisiana's policy that requires that all high school students graduating from public secondary schools in Louisiana pass a graduation exit examination prior to receiving a state high school diploma.

Petitioners, after failing to pass such examination, filed suit against the Louisiana Board of Elementary and Secondary Education (hereinafter BESE) to have the graduation exit examination policy declared invalid and to enjoin its enforcement.

The matter was tried in the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana. There the petitioners contended that the graduation examination policy was invalidly promulgated and administered as BESE had been given no legislative authority to adopt such a policy. Additionally, petitioners argued that requiring only public high school students, and not non-public high school students, to take the examination in order to obtain a state diploma was a violation of the public students' right to equal protection of the laws. The trial court ruled in petitioners' favor declaring BESE's policy on the graduation exit examination unconstitutional and enjoined BESE from administering this policy.

Respondent appealed the trial court's decision to the Louisiana First Circuit Court of Appeal which reversed the trial court's holding that the graduation exit examination violates the Equal Protection Clause and vacated the order granting the preliminary injunction. The Louisiana Supreme Court, in an unanimous decision, denied petitioners' application for writ of certiorari to review the Louisiana Court of Appeal's decision.

This brief is now filed by the Attorney General of Louisiana, Richard P. Ieyoub, on behalf of BESE in opposition to the petition for writ of certiorari filed by petitioners with this Honorable Court in order to point out material misstatements or omissions of fact and law set forth in the petition as well as to present BESE's arguments for denying the petition for writ of certiorari.

MATERIAL MISSTATEMENTS OR OMISSIONS OF LAW AND FACT

First, petitioners' citations of Louisiana Revised Statutes 12:6A(11), 12:24.4(F), and 12:24.4(2), on pages vii, 4, 6 and 7, are completely erroneous. The proper citations for these statutes are 17:6A.(11), 17:24.4F., and 17:24.4A.(2), respectively.

Second, petitioners state that all of the opinions of the Louisiana state courts with respect to this matter are unreported and, further, that the Louisiana First Circuit Court of Appeal's opinion is unpublished. This, however, is inaccurate as the Louisiana First Circuit Court of Appeal's decision was released and is published at 637 So.2d 548 (1994) and the Louisiana Supreme Court's denial of the petition for writ of certiorari is published at 635 So.2d 250 (1994).

Third, the petitioners attempt to misrepresent the nature of the case by the statement contained on page 3 of their petition for writ for certiorari. The petitioners state, "Obviously, a disadvantaged inner-city youth who already has a multitude of hurdles to jump in order to obtain a high school diploma. . .", suggesting this statement reflects issues tried in the Louisiana courts. In fact, no evidence whatsoever was introduced pertaining to the socioeconomic status of the petitioners. The inclusion of this statement is totally irrelevant and immaterial to this case, and inclusion can only be construed as an attempt to expand the issues beyond those that were tried below.

Fourth, at page 5 of the petition, also in the statement of the case, petitioners state that they are "suffering irreparable harm because they are not graduating with their respective classes and, as such, will be prohibited from pursuing their life long dreams or goals, i.e., to attend college or seek employment. (Record p.192)". This statement is inaccurate because

most, if not all, of the petitioners actually participated in graduation ceremonies with their high school classes. Additionally, there is no evidence in the record that these petitioners are being prohibited from pursuing any of their goals because they have not passed the graduation exit examination. The record reference cited by petitioners in support of this proposition is erroneous.

Fifth, petitioners repeatedly misstate the law throughout their petition for writ of certiorari. They state that the sole criteria for graduating from a public high school in Louisiana is passing the graduation exit examination. This is not true. BESE also requires that 23 Carnegie Units be completed by each student prior to graduation. (Exhibit P-10.)

The sixth misstatement apparent in the petition is found on page 8 and concerns the Louisiana First Circuit Court of Appeal's opinion. Petitioners erroneously state that the court's opinion fails to address the issue of the inapplicability of the graduation exit examination requirement to home study students who reenter the public school setting and to students who receive a general equivalency diploma. The Louisiana Court of Appeal did, however, address both of these situations and concluded that the graduation exit examination could not be administered to these students without violating the Equal Protection Clause. See petitioners' Appendix A-13.

Seventh, petitioners again go outside the record of this case on pages 9 and 10 insofar as they speculate that those students who are financially unable to attend private schools are being "penalized" for attending Louisiana's public schools by being required to pass the graduation exit examination. Petitioners go on to speculate as to the effect of the graduation

exit examination on students with the "advent of the 'voucher system'." Petitioners' statements are not facts which have been established in this case nor are they relevant to the issue presented in their petition.

Eighth, petitioners erroneously assert that the opinion of the Louisiana First Circuit Court of Appeal and the Louisiana Supreme Court's decision, denying the petition for writ of certiorari, are in conflict with the decision of the United States District Court for the Eastern District of Texas in the case of *Crump v. Gilmer Independent School District,* 797 F.Supp. 552 (1992). The court in *Crump* held that students who had completed all requirements for a diploma, but had not passed a statewide competency examination, should be permitted to participate in graduation ceremonies. The decision of the Louisiana District Court, Louisiana Court of Appeal and Louisiana Supreme Court all concern the administration of the graduation exit examination and the awarding of diplomas. The issue in the Louisiana state courts did not consider participation in graduation ceremonies, therefore, there is no conflict with the *Crump* decision.

Ninth, petitioners cite the case of *Board of Elementary and Secondary Education v. Nix,* 347 So.2d 147 at 152 (La. 1977), for the proposition that the Louisiana Legislature's allege indecision with respect to adopting the graduation exit examination requirement by statute shows the Legislature's intent not to make this a graduation requirement. Petition for Writ of Certiorari, p. 12. However, the *Nix* case has absolutely nothing to do with the adoption of a graduation exit examination and it certainly does not support the proposition for which it is cited.

Lastly, petitioners state that, at the trial of this matter, respondent in attempting to establish a legitimate purpose for the graduation exit examination proved only that the purpose for adopting this requirement was to give greater recognition to the high school diploma. However, the record in this case clearly shows that this was not the only purpose behind the adoption of the graduation exit examination. Testimony at the trial of this matter by Dr. Raymond Arveson, Louisiana's State Superintendent of Education, showed that the graduation exit examination ensures that the required curriculum is being taught in the public schools and it indicates that the student who passes the test has reached a certain level of academic achievement and proficiency. (R. 154-5).

SUMMARY OF THE ARGUMENT

Petitioners in their petition for writ of certiorari to review the Louisiana Court of Appeal and Louisiana Supreme Court's actions have not stated a substantial question of federal law to be decided by this Court. The petition, though claiming to present a question as to the constitutionality of BESE's graduation exit examination requirement under the Equal Protection Clause, is in substance actually challenging BESE's authority to adopt such a requirement. This is purely a question of state law. Further, the constitutional question raised by petitioners is clearly answered by existing case law, *Debra P. v. Turlington,* 644 F.2d 397 (5th Cir. 1981)[1], and their challenge to the Louisiana Court of Appeal and Louisiana Supreme Court's application of *Debra P.* to the matter at hand is frivolous and insufficient to vest jurisdiction in this Court pursuant to 28 U.S.C., Section 1257(a).

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1. Remanded 564 F.Supp. 177 (M.D. Fla. 1983), on appeal 730 F.2d 1405 (11th Cir. 1984).

Petitioners, further, assert that the Louisiana state court decisions in this case conflict with federal court and state district court decisions. Petitioners are erroneous in stating this as a basis for granting a writ of certiorari as the cases cited by petitioners as being in conflict with the Louisiana state courts' decisions are not actually in conflict and, therefore, should not be considered as a basis for granting the petition for writ of certiorari.

None of the considerations governing review on writ of certiorari under Rule 10.1 exist in this case. The decisions of the Louisiana Court of Appeal and Louisiana Supreme Court do not conflict with any applicable decisions of this Court nor is there an important question of federal law which must be answered.

Additionally, it is respondent's position that the decision of the Louisiana First Circuit Court of Appeal, which is set out in petitioners' Appendix B, is correct and there is no reason for this Court to review it. Respondents agree with the Louisiana Court of Appeal that the graduation exit examination was adopted by BESE pursuant to its constitutional and statutory grants of power to supervise and administer the public elementary and secondary schools in Louisiana. The graduation exit examination is being administered constitutionally and BESE's policy is mandated by the Equal Protection Clause as applied in *Debra P. v. Turlington, supra.* Thus, respondents assert that the Louisiana Court of Appeal and Louisiana Supreme Court properly decided this case and there is no need for a review of those decisions.

ARGUMENT

I. PETITIONERS HAVE NOT STATED A SUBSTANTIAL QUESTION OF FEDERAL LAW SUFFICIENT TO VEST THIS COURT WITH JURISDICTION.

This Court has authority to review, by writ of certiorari, final judgments or decrees rendered by the highest court of a state where the validity of a statute is drawn into question on the gound of its being repugnant to the Constitution of the United States. 28 U.S.C., Section 1257. Thus, a federal question is essential to this Court's jurisdiction over the Louisiana Supreme Court's denial of the petition for writ of certiorari in the case at bar.

The federal question which is asserted must be real and substantial and not frivolous in nature. *Erie R. Co. v. Solomon,* 237 U.S. 427, 35 S.Ct. 648, 59 L.Ed. 1033 (1915). The mere fact that a federal question has been asserted is not sufficient to give this Court jurisdiction where the question lacks all color of merit and has no substance or foundation. *New Orleans Waterworks Co. v. Louisiana,* 185 U.S. 336, 22 S.Ct. 691, 46 L.Ed. 1005 (1902).

The federal question asserted by petitioners in their petition for writ of certiorari is without any substance and has no merit. Petitioners' claim is that BESE's graduation exit examination, as it is being administered, violates the Equal Protection Clause. However, the petition does not give any substantive reason why petitioners believe that as a matter of law, and not social policy, the decisions of the Louisiana state courts should be reviewed. Thus, the petition contains no real and substantial federal question.

Additionally, petitioners' argument for granting a writ of certiorari in this case is in large measure concerned with issues of state law. The petitioners repeatedly state that BESE's graduation exit examination policy was implemented without legislative approval. This issue of state law was properly decided by the Court of Appeal and Supreme Court. Absent a real and substantial question of federal law, there is no basis for this Court to review the state courts' decisions.

II. THERE IS NO COMPELLING REASON FOR THIS COURT TO EXERCISE ITS DISCRETION BY GRANTING A WRIT OF CERTIORARI IN THIS CASE.

Petitioners state as an additional reason why this Court should grant a writ of certiorari that the decisions of the Louisiana state courts conflict with federal court and state court decisions.

Petitioners assert that the decisions of the Louisiana courts are in direct conflict with *Crump v. Gilmer Independent School District,* 797 F. Supp. 552 (E.D. Tex. 1992). A review of that decision demonstrates that there is no such conflict. In *Crump* the court merely allowed students to participate in graduation ceremonies. Here participation in graduation ceremonies was not an issue. In fact, as pointed out earlier in respondent's brief, the petitioners were not prohibited from participating in graduation ceremonies at their respective high schools.

Under Rule 10.1(b) of the Supreme Court Rules, this Court in considering a petition for writ of certiorari will take into consideration the decision of a state court of last resort on a federal question which conflicts with the decision of a United States court of appeals.

Petitioners state that the decisions of the Louisiana state courts conflict with the United States Court of Appeals for the Fifth Circuit in *Debra P. v. Turlington, supra.* This, however, is not accurate as the opinion of the Court of Appeal closely follows and does not in any way conflict with the holding and reasoning of the court in *Debra P.* Thus, there is no conflict among these decisions which would constitute a consideration for this Court under Rule 10.1 of the Supreme Court Rules.

Also, under Rule 10.1(c), a consideration for granting a petition for writ of certiorari exists where a state court has decided an important question of federal law which has not, but should be, settled by this Court or where a federal question has been decided in a way that conflicts with applicable decisions of this Court.

The decisions of the Louisiana Court of Appeal and Louisiana Supreme Court address the constitutionality of BESE's graduation exit examination policy in a manner consistent with existing jurisprudence. There is no conflict with any decisions of this Court. Further, the issue of BESE's power to impose the graduation exit examination requirement on Louisiana's public school students is primarily a matter of local concern, and the issue of whether BESE's policy is violative of the Equal Protection Clause is not an important question of federal law which should be decided by this Court.

Respondents therefore assert that there is no compelling reason for this Court to grant the petition for writ of certiorari as none of the considerations under Rule 10.1 of the Supreme Court Rules is present in petitioners' brief.

III. THE DECISIONS OF THE LOUISIANA COURT OF APPEAL AND THE LOUISIANA SUPREME COURT ARE PROPER AND, THUS, A WRIT OF CERTIORARI SHOULD NOT BE ISSUED.

The Louisiana First Circuit Court of Appeal reversed the judgment of the Louisiana District Court holding that BESE had the authority to establish the graduation exit examination and that the administration of the examination does not violate the Equal Protection Clause. The Louisiana Supreme Court unanimously denied the petition for writ of certiorari to review the Louisiana Court of Appeal's decision. See petitioners' Appendix A-1.

The Louisiana Court of Appeal in its opinion stated that BESE's policy with respect to the graduation exit examination was validly adopted as a requirement for obtaining a state high school diploma. This conclusion is based upon BESE's authority under Article VIII, Section 3(A) of the Louisiana Constitution of 1974, which provides:

> "The State Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools, vocational-technical training and special schools under its jurisdiction and shall have budgetary responsibility for all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by this constitution or by law, but shall have no control over the business affairs of a parish or city school board or the selection or removal of its officers and employees.

In furtherance of BESE's constitutional power the Louisiana Legislature has statutorily granted BESE broad

power to enact policies with respect to the supervision and control of the public schools. This includes a broad grant of power under Louisiana Revised Statute 17:6A.(15), which states that BESE shall have the authority to:

> "perform such other functions as are necessary to the supervision and control of those phases of education under its supervision and control."

Hence, the Louisiana Court of Appeal concluded that BESE is authorized to require the graduation exit examination of public school students as a requirement for receiving a state diploma. See petitioners' Appendix A-3 to A-7.

The Louisiana Court of Appeal in its decision also concluded that the Louisiana District Court had improperly declared BESE's graduation exit examination, as administered, in violation of the Equal Protection Clause. The court's opinion stated that BESE has limited authority over non-public school students under Article VIII, Section 4 of the Louisiana Constitution of 1974. This authority is limited to approving non-public schools on the basis that they provide a "substained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools . . ." Thus, the Louisiana Court of Appeal held that:

> This limited constutional authority to approve non-public schools does not empower BESE to mandate the contents of the courses taught or to require that the students pass the GEE prior to graduation.

Petitioners' Appendix A-8.

Further, the Louisiana Court of Appeal concluded that BESE is also constrained by the United States Constitution from requiring non-public school students to pass the graduation exit examination. The court stated that requiring non-pub-

lic school students to take the graduation exit examination would violate the First and Fourteenth Amendments to the United States Constitution which prevent the states from intruding into the areas of religious freedom and parental control over the rearing of children. Petitioners' Appendix A-8 to A-10.

With respect to the issue of the constitutionality of BESE's policy under the Equal Protection Clause, the Louisiana Court of Appeal held that under the existing jurisprudence BESE could impose the graduation exit examination on public school students while not requiring it of non-public school students. The court relied upon the case of *Debra P. v. Turlington, supra,* which held that a Florida requirement that public high school students pass an examination in order to receive a diploma was constitutional under the Fourteenth Amendment.

The court in *Debra P.* also held that an exit exam cannot be made a requirement for graduation unless it is specifically tied to the curriculum taught in the schools. Petitioners' Appendix A-11. Applying this holding the Louisiana Court of Appeal found that, based on testimony in the Louisiana District Court, the graduation exit examination administered by BESE is a five part, criterion referenced exam which specifically tests the curriculum required to be taught in Louisiana's public schools. Thus, requiring public school students to take the graduation exit examination does not violate their constitutional rights as they are being tested on precisely what they have been taught in school.

Further, the Louisiana Court of Appeal concluded that the fact that BESE's policy exempts certain students who receive state diplomas from taking the graduation exit exami-

nation does not violate the Equal Protection Clause. Those students who are exempt from taking the test, namely, home study students who return to the public school system in the 11th and 12th grades and those students who receive a general equivalency diploma, cannot be required to pass the graduation exit examination because they are not necessarily being taught the same curriculum which is being taught in the public schools and which is tested prior to graduation. This conclusion, according to the Louisiana Court of Appeal, is also mandated by the Equal Protection Clause and the holding of *Debra P.*

Lastly, the Louisiana Court of Appeal concluded that under the rational relationship standard of review, applicable to equal protection challenges in which no suspect or intermediate classification is involved, Louisiana's interest in ensuring the minimun competency of persons obtaining a state diploma clearly justifies the requirement that students pass a graduation exit examination. The court stated:

> "In the present case, the state of Louisiana has a valid interest of insuring the minimum competency of persons obtaining a state diploma. The GEE bears a rational relationship to this goal by insuring that students who obtain a state diploma have reached the required level of competency. We also note that BESE's policies regarding remediation and retesting further the state's interests by providing failing students an opportunity to achieve the required level of competency."

Petitioners' Appendix A-14. In addition, the court went on to say that the fact that some state monies are given to non-public schools does not require the state to impose the graduation exit examination on them because the state has a stronger

interest in public education for which it pays the cost. Petitioners' Appendix A-15.

The Louisiana Court of Appeal's opinion and the Louisiana Supreme Court's decision, denying review of that opinion, were correct. The graduation exit examination requirement adopted and administered by BESE is constitutional and does not violate the right of public school students to equal protection under the law.

IV. CONCLUSION

BESE's requirement that students pass a graduation exit examination prior to being awarded a state diploma is a legitimate policy being administered in accordance with the Equal Protection Clause.

The Louisiana Court of Appeal and Louisiana Supreme Court both agreed.

Petitioners' attempt to obtain a writ of certiorari from this Honorable Court is frivolous. They have failed to state a real and substantial federal question and their petition is based primarily upon issues of state law.

There is no conflict between the Louisiana Court of Appeal and Louisiana Supreme Court's decisions and the federal jurisprudence cited by petitioners. Essentially, there is no compelling reason for this Court to review the actions of the state courts in question.

For these reasons, Respondent asks that this Honorable Court deny the petition for writ of certiorari in this matter.

Respectfully Submitted,

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